

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KERRI HUNT, } Case No. EDCV 09-2127 RNB

Plaintiff,

vs.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

} ORDER REVERSING DECISION OF
COMMISSIONER AND REMANDING
FOR FURTHER ADMINISTRATIVE
PROCEEDINGS

Plaintiff filed a Complaint herein on November 23, 2009, seeking review of the Commissioner's denial of her applications for disability insurance and Supplemental Security Income benefits. In accordance with the Court's Case Management Order, the parties filed a Joint Stipulation on July 21, 2010. Thus, this matter now is ready for decision.¹

¹ As the Court advised the parties in its Case Management Order, the decision in this case is being made on the basis of the pleadings, the Administrative Record ("AR"), and the Joint Stipulation ("Jt Stip") filed by the parties. In accordance with Rule 12(c) of the Federal Rules of Civil Procedure, the Court has determined which party is entitled to judgment under the standards set forth in 42 U.S.C. § 405(g).

DISPUTED ISSUES

As reflected in the Joint Stipulation, the disputed issues that plaintiff is raising as the grounds for reversal and remand are as follows:

1. Whether the Administrative Law Judge (“ALJ”) properly considered plaintiff’s ability to perform her past relevant work.
 2. Whether the ALJ properly considered the opinions of Dr. James Shook, M.D.
 3. Whether the ALJ properly assessed plaintiff’s credibility.

DISCUSSION

With respect to Disputed Issue No. 2, the Court finds and concludes that the ALJ failed to state the requisite specific and legitimate reasons, supported by substantial evidence in the record, for rejecting the opinions of Dr. Shook found at AR 215, 303-04, and 317-19.² See, e.g., Reddick v. Chater, 157 F.3d 715, 725 (9th Cir. 1998) (“A treating physician’s opinion on disability, even if controverted, can be rejected only with specific and legitimate reasons supported by substantial evidence in the record.”); Embrey v. Bowen, 849 F.2d 418, 421-22 (9th Cir. 1988). To the extent that the Commissioner has proffered reasons for why Dr. Shook’s opinions did not need to be accepted that were not articulated by the ALJ, the Court is unable to consider those reasons. See Connett v. Barnhart, 340 F.3d 871, 874 (9th Cir. 2003); Ceguerra v. Sec’y of Health & Human Svcs., 933 F.2d 735, 738 (9th Cir. 1991) (“A reviewing court can evaluate an agency’s decision only on the grounds articulated by the agency.”). Here, even assuming that the ALJ’s rejection of the opinions of Dr. Shook reflected on the March 8, 2008 evaluation form (AR 317-19) also applied to the opinions rendered by Dr. Shook on May 22, 2007 (AR 215) and May 22, 2008

² The Court notes that plaintiff does not dispute the ALJ's rejection of Dr. Shook's mental work capacity evaluation found at AR 321-22.

1 (AR 303-04), the fact remains that the only reason given by the ALJ was that “Dr.
 2 Shook’s physical evaluation is inconsistent with all the medical records of evidence.”
 3 (See AR 11.) That reason constituted the same kind of non-specific boilerplate
 4 language rejected by the Ninth Circuit as insufficient in Embrey, 849 F.2d at 421-22.
 5 There, the Ninth Circuit observed, “To say that medical opinions are not supported
 6 by sufficient objective findings or are contrary to the preponderant conclusions
 7 mandated by the objective findings does not achieve the level of specificity our prior
 8 cases have required, even when the objective factors are listed seriatim.” Id. at 421.

9 With respect to Disputed Issue No. 3, for the reasons stated by plaintiff (see Jt
 10 Stip at 31-35, 38), the Court finds and concludes that the ALJ failed to make a proper
 11 adverse credibility determination. Put another way, the Court finds and concludes
 12 that not one of the reasons given by the ALJ constitutes a clear and convincing reason
 13 for rejecting plaintiff’s subjective pain testimony. See Cotton v. Bowen, 799 F.2d
 14 1403, 1407 (9th Cir. 1986); see also Smolen v. Chater, 80 F.3d 1273, 1281 (9th Cir.
 15 1996); Dodrill v. Shalala, 12 F.3d 915, 918 (9th Cir. 1993); Bunnell v. Sullivan, 947
 16 F.2d 341, 343 (9th Cir. 1991).

17 The Court’s findings and conclusions with respect to Disputed Issue Nos. 2 and
 18 3 render it unnecessary to decide whether the ALJ erred in his vocational
 19 determination that plaintiff remained capable of performing her past relevant work
 20 (Disputed Issue No. 1).

22 CONCLUSION AND ORDER

23 The law is well established that the decision whether to remand for further
 24 proceedings or simply to award benefits is within the discretion of the Court. See,
 25 e.g., Salvador v. Sullivan, 917 F.2d 13, 15 (9th Cir. 1990); McAllister, 888 F.2d at
 26 603; Lewin v. Schweiker, 654 F.2d 631, 635 (9th Cir. 1981). Remand is warranted
 27 where additional administrative proceedings could remedy defects in the decision.
 28 See, e.g., Kail v. Heckler, 722 F.2d 1496, 1497 (9th Cir. 1984); Lewin, 654 F.2d at

1 635. Remand for the payment of benefits is appropriate where no useful purpose
 2 would be served by further administrative proceedings, Kornock v. Harris, 648 F.2d
 3 525, 527 (9th Cir. 1980); where the record has been fully developed, Hoffman v.
 4 Heckler, 785 F.2d 1423, 1425 (9th Cir. 1986); or where remand would unnecessarily
 5 delay the receipt of benefits, Bilby v. Schweiker, 762 F.2d 716, 719 (9th Cir. 1985).

6 Weighing in favor of a remand for further administrative proceedings here is
 7 the fact that this is not an instance where no useful purpose would be served by
 8 further administrative proceedings. Rather, additional administrative proceedings
 9 conceivably could remedy the defects in the ALJ's decision.

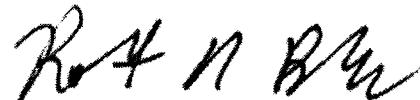
10 The Court is mindful of Ninth Circuit case authority holding that "the district
 11 court should credit evidence that was rejected during the administrative process and
 12 remand for an immediate award of benefits if (1) the ALJ failed to provide legally
 13 sufficient reasons for rejecting the evidence; (2) there are no outstanding issues that
 14 must be resolved before a determination of disability can be made; and (3) it is clear
 15 from the record that the ALJ would be required to find the claimant disabled were
 16 such evidence credited." See Benecke v. Barnhart, 379 F.3d 587, 593 (9th Cir. 2004);
 17 see also, e.g., Harman v. Apfel, 211 F.3d 1172, 1178 (9th Cir.), cert. denied, 531 U.S.
 18 1038 (2000)³; Smolen, 80 F.3d at 1292; Varney v. Secretary of Health & Human
 19 Servs., 859 F.2d 1396, 1399-1401 (9th Cir. 1988). Under the foregoing case
 20 authority, when this test is met, the Court will take the improperly discredited
 21 testimony as true and not remand solely to allow the ALJ another opportunity to make
 22 specific findings regarding that testimony. This rule applies not only to a claimant's
 23 improperly discredited excess pain and other subjective symptom testimony, but also
 24 to lay witnesses' improperly discredited testimony, and to improperly discredited

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 27 ³ In Harman, the Ninth Circuit noted that this three-part test "really
 28 constitutes a two part inquiry, wherein the third prong is a subcategory of the
 second." Harman, 211 F.3d at 1178 n.7.

1 opinions of a treating or examining physician. However, in Connett, 340 F.3d at 876,
2 the panel held that the “crediting as true” doctrine was not mandatory in the Ninth
3 Circuit. There, the Ninth Circuit remanded for reconsideration of the claimant’s
4 credibility where the record contained insufficient findings as to whether the
5 claimant’s testimony should be credited as true. See id.

6 Based on its review and consideration of the entire record, the Court has
7 concluded on balance that a remand for further administrative proceedings pursuant
8 to sentence four of 42 U.S.C. § 405(g) is warranted here. Accordingly, IT IS
9 HEREBY ORDERED that Judgment be entered reversing the decision of the
10 Commissioner of Social Security and remanding this matter for further administrative
11 proceedings.⁴

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13 DATED: July 26, 2010



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15 ROBERT N. BLOCK
16 UNITED STATES MAGISTRATE JUDGE
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27 ⁴ It is not the Court’s intent to limit the scope of the remand, including
28 possibly ordering plaintiff to undergo a consultative examination.